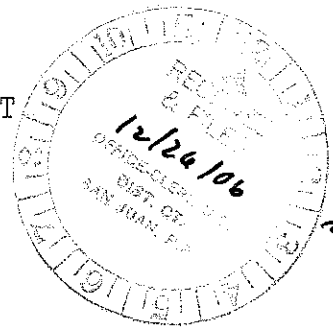


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO



UNITED STATES OF AMERICA,
Respondent

-vs-

GUILLERMO FONSECA-BERMUDEZ,
Defendant

Case No. 99-CR-254-05-(DRD)

Honorable Judge Daniel R. Dominguez

EX-PARTE SPECIAL MOTION FOR MODIFICATION AND REDUCTION OF THE
TERM IMPOSED PURSUANT TO 18 U.S.C. §3582(c)(2), SEEKING
REDUCTION OF TERM IMPOSED DUE TO UNCREDITED JAIL TIME SEEKING
EQUITABLE TOLLING OF 625 DAYS, inter alia.

NOW COMES Guillermo Fonseca, a pro-se Petitioner in the above captioned case seeking sua sponte relief and a nunc pro tunc order authorizing and decreeing that the Petitioner is certainly entitled to the equitable tolling he has been deprived from the date of custody, to which has been consistently ongoing, but not applied concurrently, as is requested for relief herein.

Accordingly, the Petitioner is acting without counsel and is not a licensed attorney, nor does he bear the knowledge of a litigator, therefore, Petitioner moves this Honorable Court to hold his filings to much less stringent standards of the law for any inartfull errors and/or omissions. See, Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 562.

Petitioner in addition respectfully request that this Honorable Court would waive any cost relative to filings in this matter. Pursuant to 18 U.S.C. §1915(2), as the Petitioner is a proverty

stricken individual and is without the funds to tender any fines and/or fees for the viewing of this matter, therefore, the Petitioner hereby moves with all the foregoing.

STATEMENT OF THE FACTS

Petitioner Fonseca contends that the [**conflict**] lies with the B.O.P, [n]ot [**acknowledging**] his Judgment and Commitment that [**explicitly**] explains that Petitioner's Federal sentence is to run concurrently with Petitioner's Commonwealth sentence of Puerto Rico, docket #4-26369 and #6-51901, which was [**ordered**] by sentencing Judge Dominguez.

Petitioner states that [**ALL CREDIT**] should apply from the date of Commonwealth sentencing that started on January 15, 1999, up until October 2, 2000, which comes to be [**625 days**], prior jail credit. See: Kayfez, 993 F.2d 1288 (7th Cir. 1993). As double credit is possible in this instant case before this Honorable Court, due to concurrent sentencing.

Boiled to bare essence, Petitioner Fonseca was imprisoned federally on or about January 15, 1999, and was writted to the custody of the Federal Marshals to be apprised of the actions under Docket Number 99-CR-254-05(DRD), on August 24, 1999. Then Petitionr was sentenced on October 2, 2000 to serve [**ONE HUNDRED FIFTY-SIX MONTHS**] by order of Judge Dominguez, and that the Federal Sentence to run concurrent with the Commonwealth sentence. Petitioner was then transferred back to the custody of the Commonwealth of Puerto Rico on November 28, 2000 to complete service of his Commonwealth sentence. Then released on December 15, 2003 to start serving his active federally imposed sentence of 156 months that was calculated to begin October 2, 2000.

Petitioner includes his entire references of factual points by including (Exhibits A, A1, B, B1).

CONTENTION OF LAW FOR CONCURRENT DOCTRINE

Petitioner asserts that is relief lies within Kayfez, 993 F.2d 1288 (7th Cir. 1993), because Petitioner is a prime candidate as to where he was dealing with both Commonwealth and Federal jurisdictional issues but deprived the full equitable tolling with respects to [625 days] spent consistently in custody of both.

Thus, the Petitioner in the instant case specifically requests that his current active sentence be reduced by the 625 days he has, and is being deprived of, to date.

It is appropriate for a sentencing court to grant a downward departure in these extraordinary cases.

To further avoid ongoing [confusion] with the Bureau of Prisons, this Court should authorize relief for the Petitioner under 18 U.S.C. §3585(b), and grant credit for the 625 days downward departure, and revise it's application note to [clearly state] on the Judgment and Commitment Order that this case be re-computed pursuant to §5G1.3(c).

Therefore, the Petitioner respectfully submits that this District Court now has the very same flexibility to grant the Petitioner the relief he is clearly entitled and has demonstrated with the annexed exhibits.

The Petitioner further believes he is certainly entitled to relief under 18 U.S.C. §3553(a), as these are certainly mitigating factors that warrant relief entitled Petitioner Fonseca at this time.

RELIEF REQUESTED

The Petitioner moves this Honorable Court to grant relief in this case for all the foregoing reasons, as he believes he is entitled.

- (A) A Court order that the Petitioner's sentence be hereby decreed candidacy for a downward departure, under 18 U.S.C. §3553(a).
- (B) That the Court will exercise it's Judicial flexibility and reduce the Petitioner's present sentence by 625 days, pursuant to 18 U.S.C. §3582(c)(2), Modification and Reduction of term Imposed, in direct relation to the fact that these days have not been computed by the Bureau of Prisons correctly, and
- (C) Grant an EX-PARTE ORDER FOR A NUNC PRO TUNC granting the Petitioner a downward departure of 625 days from the date of his present release date of April 17, 2012, reduced by 20 months and eighteen (18) days, and
- (D) That the Court would order that the Petitioner be hereby credited and awarded a concurrent doctrine for equitable tolling to all the above requested relief.

THEREFORE, Petitioner Fonseca respectfully moves this Court to respond to this action rapidly, pursuant to 28 U.S.C. §2243, for a 72-hour response.

Respectfully submitted,

Guillermo Fonseca
NAME *Guillermo Fonseca* TITLE *Case Manager*
AUTHORIZED BY THE ACT OF JULY 7, 1955 TO
ADMINISTER OATHS (18 USC 4004).
12/13/06

Guillermo Fonseca

Guillermo Fonseca-Bermudez
#18158-069
Federal Correctional Institution
P.O. Box 1000, Unit C-1
Cumberland, MD 21502-2000

On this, the 13th day of DECEMBER, 2006, I, Guillermo Fonseca-Bermudez, do state, that all the foregoing is honest and true, under the penalty of perjury Act of 28 U.S.C. §1746.

/s/ Guillermo Fonseca
Guillermo Fonseca-Bermudez